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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,837	09/30/2003	Ricky Joe Bishop	22490-RA	6902
30184	7590	07/27/2004	EXAMINER	
MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C. 1899 POWERS FERRY ROAD SUITE 310 ATLANTA, GA 30339			MILLER, BENA B	
			ART UNIT	PAPER NUMBER
			3712	

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,837

Applicant(s)

BISHOP, RICKY JOE

Examiner

Bena Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 12-14 and 18-25 is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☒ Claim(s) 8-11 and 15-17 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Willis.

Regarding claim 1, Willis teaches in the figures a game call comprising at least one striking plate member (22) and at least one striking assembly (10).

Regarding claim 2, Willis further teaches a striking plate is disposed on the bottom of the plate member (fig.5).

Regarding claim 3, Willis further teaches a frictional surface (fig.5).

Regarding claim 4, Willis further teaches a cavity formed on a top side of the plate member and an acoustic chamber (fig.5).

Regarding claim 5, the examiner takes the position that the cavity of Willis functions to receive and removably attach the plate member to the assembly.

Regarding claim 6, Willis further teaches at least one acoustic channel formed on a top side of the at least one plate member (26).

Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Butler et al.

Regarding claim 1, Butler et al teaches in the figures a game call comprising at least one striking plate member (20,16) and at least one striking assembly (18).

Regarding claim 2, Butler et al further teaches a striking plate is disposed on the bottom of the plate member (fig.5).

Regarding claim 3, Butler et al further teaches a frictional surface (fig.5).

Regarding claim 4, Butler et al further teaches a cavity formed on a top side of the plate member and an acoustic chamber (fig. 2 and 4).

Regarding claim 5, the examiner takes the position that the cavity of Butler functions to receive and removably attach the plate member to the assembly.

Regarding claim 7, Butler et al further teaches comprises a tube to amplify sounds (fig.4).

Claims 12, 13 and 18-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Funk.

Regarding claim 12, Funk teaches in the figures a game call comprising at least one striking plate member (20), at least one striking assembly (10), and at least one elastic retention member (38; col. 2, line 40).

Regarding claim 13, Funk further teaches an acoustic tube (see marked copy figure 2).

Regarding claims 18, Funk further teaches a method comprising the step of moving a sliding member within an acoustic tube (fig.2).

Regarding claim 19, Funk further teaches a bottom side of the sliding member frictionally engages a top side (18; fig.2).

Regarding claim 20, Funk further teaches the sliding member returned to it original position by an elastic retention member (38).

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Regarding claim 21, Funk further teaches the game calls resound off a sounding board, resonate through a cavity formed within a striking plate member, travel through at least one channel formed within the striking plate member (24).

Regarding claim 22, Funk further teaches the game calls resound off the sounding board, resonate through the acoustic tube, and transmit out from a top side of the acoustic tube (fig.2).

Regarding claim 23, Funk further teaches the sliding member is disposed thereon a striking plate (fig.2).

Regarding claim 24, Funk further teaches the sliding member could be moved over the striking block by a single hand (fig.2).

Regarding claim 25, Funk further teaches the sliding member and the striking block may be operated in any physical orientation (fig.2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Funk.

Funk teaches in the figures the claimed invention except a second striking plate disposed on the bottom of the sliding member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a second striking plate disposed on the bottom of the sliding member, since it has been

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held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Allowable Subject Matter

Claims 8-11 and 15-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Walker teaches a wild game calling device. Malone, Sr. teaches a turkey caller. Tannehill teaches a bird call. Wisor teaches a turkey caller. Jackson teaches a sounding device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Bena Miller
Examiner
Art Unit 3712

bbm
July 26, 2003